

Message Text

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ORIGIN NEA-10

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NEA/P: GSERMAN

NEA/INS:RFOBER

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R 200025Z AUG 76

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

INFO AMCONSUL BOMBAY

AMCONSUL CALCUTTA

AMCONSUL MADRAS

AMEMBASSY KATHMANDU

C O N F I D E N T I A L STATE 207058

E.O. 11652: GDS

TAGS: SREF, IN

SUBJECT: POLITICAL ASYLUM FOR INDIAN

REF: (A) NEW DELHI 10930 (NOTAL); (B) STATE 183315 (NOTAL)

1. THE DEPARTMENT HAS ADVISED THE IMMIGRATION AND
NATURALIZATION SERVICE THAT R.B. JETHMALANI HAS STATED A
CREDIBLE CASE FOR POLITICAL ASYLUM, AND WE THEREFORE EXPECT
THAT INS WILL GRANT HIM REFUGEE STATUS IN THE UNITED STATES,
THE FIRST SUCH GRANT TO AN INDIAN CITIZEN.

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2. FYI. UNITED STATES POLICY, AS SET OUT IN 2 FAM 227, IS

TO FULFILL OUR INTERNATIONAL OBLIGATION UNDER THE "PROTOCOL RELATING TO THE STATUS OF REFUGEES". UNDER EXISTING PROCEDURES, INS REQUESTS DEPARTMENT'S VIEWS ON UNUSUAL ASYLUM APPLICATIONS, AND THE DEPARTMENT IS BOUND TO RESPOND REGARDING THE MERITS OF THE REQUEST. THE KEY FACTUAL DETERMINATION IS WHETHER THE APPLICANT FOR REFUGEE STATUS HAS A REASONABLE BASIS OF CONCERN ABOUT PERSECUTION UPON RETURN TO HIS HOME COUNTRY BASED ON RACE, RELIGION, NATIONALITY, POLITICAL OPINION, OR MEMBERSHIP OF A PARTICULAR SOCIAL GROUP. JETHMALANI'S CASE SEEMED PARTICULARLY CLEAR SINCE HIS PUBLIC SPEECH IN JANUARY 1976 CRITICIZING THE EMERGENCY

AND MRS. GANDHI LED TO AN OUTSTANDING GOVERNMENT ARREST ORDER WHICH WOULD RESULT IN HIS DETENTION WITHOUT CHARGES OR JUDICIAL APPEAL IF HE RETURNED TO INDIA.

3. A GRANT OF POLITICAL ASYLUM IN THE U.S. DOES NOT CONSTITUTE A PERMANENT CHANGE OF STATUS. IT IS IN THE NATURE OF ADMINISTRATIVE PERMISSION TO REMAIN AND WORK IN THE UNITED STATES AND IS REVIEWED ANNUALLY TO DETERMINE IF CONDITIONS IN THE HOME COUNTRY JUSTIFY ITS CONTINUANCE. UPON TERMINATION OF REFUGEE STATUS, THE PERSON CANNOT NORMALLY SEEK CHANGE OF STATUS OR APPLY RESIDENCE TIME AS A REFUGEE TOWARD PERMANENT IMMIGRANT STATUS. JETHMALANI IS AWARE OF THIS, AND NEVERTHELESS, HAS DECLINED TO AVAIL HIMSELF OF THE POSSIBILITIES FOR PERMANENT IMMIGRANT STATUS OFFERED BY HIS DAUGHTER'S RESIDENCE IN THE UNITED STATES, INDICATING HE ONLY DESIRES HAVEN UNTIL SUCH TIME AS HE CAN RETURN TO INDIA WITHOUT FEAR OF ACTION AGAINST HIM BECAUSE OF HIS POLITICAL VIEWS. END FYI.

4. IT IS DEPARTMENT POLICY NOT TO DISCLOSE OR COMMENT ON APPLICATIONS FOR ASYLUM WITHOUT THE CONSENT OF THE INDIVIDUAL INVOLVED. THUS WE WILL NOT BE INFORMING THE INDIAN EMBASSY AND YOU SHOULD NOT INFORM GOI. HOWEVER, WE ASSUME THAT JETHMALANI WILL PUBLICIZE HIS REFUGEE STATUS WHEN AND IF GRANTED BY INS. ONCE THIS HAPPENS, WE PLAN TO RESPOND TO INQUIRIES ALONG LINES SET FORTH BELOW. YOU CAN THEN ALSO DRAW ON THIS LINE IN ANSWERING ANY PRESS QUESTIONS OR IN DISCUSSING THE MATTER WITH THE GOVERNMENT OF INDIA:
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--U.S. POLICY IN CONSIDERING SUCH APPLICATION, IN ACCORDANCE WITH OUR OBLIGATIONS UNDER THE "PROTOCOL RELATING TO THE STATUS OF REFUGEES", IS NOT TO REQUIRE INDIVIDUALS TO RETURN TO THEIR HOME COUNTRY WHEN THIS WOULD PLACE THEM IN JEOPARDY BECAUSE OF THEIR POLITICAL BELIEFS OR ACTIONS. EACH CASE IS, OF COURSE, DECIDED ON ITS MERITS WITH A KEY FACTUAL DETERMINATION WHETHER THE APPLICANT

HAS A REASONABLE BASIS FOR HIS EXPRESSED CONCERNS.

--ON JUNE 7, R.B. JETHMALANI FILED A PETITION FOR POLITICAL ASYLUM IN THE U.S. IN ACCORDANCE WITH 8 CFR S108. IN ACCORDANCE WITH STANDARD OPERATING PROCEDURES, THE INS REQUESTED AN ADVISORY OPINION FROM THE DEPARTMENT OF STATE AND THE DEPARTMENT AFTER REVIEWING THE FACTS OF THE CASE, ADVISED THE INS THAT JETHMALANI HAS STATED A CREDIBLE CASE FOR POLITICAL ASYLUM IN THIS COUNTRY. ACCORDINGLY, INS HAS GRANTED HIM REFUGEE STATUS.

--BY WAY OF BACKGROUND, AN ORDER FOR JETHMALANI'S

ARREST WAS ISSUED IN INDIA AS A RESULT OF A PUBLIC SPEECH CRITICIZING THE EMERGENCY, AND UNDER THE EMERGENCY, SHOULD HE RETURN TO INDIA HE WOULD BE LIABLE TO INDEFINITE DETENTION WITHOUT STATEMENT OF CHARGES OR RECOURSE TO JUDICIAL REVIEW. ROBINSON

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